

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

KAREN WHILES AND BOB WHILES,

Plaintiffs,

v.

CIVIL ACTION NO. 2:13-cv-08617

AMERICAN MEDICAL SYSTEMS, INC., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is a Motion to Dismiss Plaintiffs Karen Whiles and Bob Whiles' Complaint with Prejudice for Failure to Comply with Pre-Trial Order # 267, filed November 27, 2018. [ECF No. 15]. In the Motion, defendant American Medical Systems, Inc. ("AMS") moves to dismiss plaintiffs' claims with prejudice because plaintiffs did not produce a completed plaintiff fact sheet by November 15, 2018. Plaintiffs have not responded.

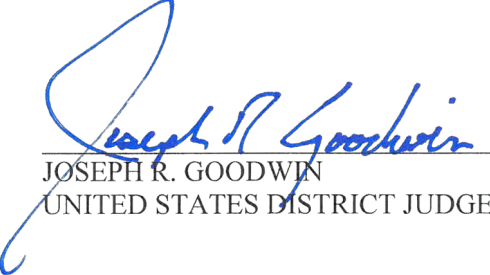
The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), the plaintiffs' claims against AMS should be dismissed without prejudice for failure to produce a completed plaintiff fact sheet in compliance with the court's previous pretrial order.

Therefore, the court **ORDERS** that AMS's Motion to Dismiss [ECF no. 15] is **GRANTED in part** to the extent AMS seeks dismissal and **DENIED insofar as AMS seeks dismissal of the**

entire case with prejudice. The court **ORDERS** that defendant AMS is dismissal without prejudice. Additional nonserved defendants remain in this case.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 15, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE